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**OCT 27 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Hubmann et al. :  
Application No. 10/758,884 :  
Filed: January 16, 2004 :  
Attorney Docket Number: :  
CM-115B-US : ON PETITION

This is a decision on the petition to revive an application abandoned unavoidably under 37 CFR § 137(a), filed October 20, 2005.

The Petition under 37 CFR 1.137(a) is hereby dismissed.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due ("Notice"), mailed June 14, 2005. The Notice set a non-extendable three (3) month period for reply. No response having been received, the application became abandoned on September 15, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

Applicant files the instant petition wherein Applicant avers that the Notice was not received.

Applicant is advised that an allegation that an Office action was not received may form the basis for revival of an application based upon unavoidable abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish non-receipt of an Office communication must include:

1. A statement from the Applicant stating that the Office communication was not received by the Applicant and attesting to the fact that a search of the file jacket and docket records indicate that the Office communication was not received.

2. A copy of the file jacket or docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in Applicant's statement.

Accordingly, Applicant's assertion, that the Office action was not received, is insufficient to justify granting of the petition. Applicant must also provide a copy of the docket record (or file jacket) where the non-received Office action would have been entered had it been received and docketed.

Applicant should file a Request for Reconsideration of Petition and include the necessary copies of documents.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Commissioner for Patents  
                    PO Box 1450  
                    Alexandria, VA 22313-1450

By FAX:           (571) 273-8300  
                    Attn: Office of Petitions

By hand:          Customer Service Window  
                    Randolph Building  
                    401 Dulany Street  
                    Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

  
Derek L. Woods

Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy